State of California

Memorandum

To : Advice Request Participants

Date : February 5, 1988

From : Fair Political Practices Commission

Diane Griffiths

Subject : Summary of January 20, 1988 Advice Request Meeting
Advice No. M-88-062

The purpose of this memo is to summarize conclusions reached as a result of the advice request meeting held on January 20, 1988.

1. Business entity. In disclosing investment interests and sources of income, it is sometimes difficult to determine: (1) whether an enterprise is a "business entity" for purposes of the Act; (2) the value of the enterprise; and (3) whether clients of the enterprise should be disclosed on Schedule D (income to the official) or Schedule H (income to business entities). Examples discussed included a family farm; a private plane occasionally leased out; a dance or piano instruction business run out of the home.

The Act's definition of business entity is very broad. Section 82005 provides:

> "Business entity" means any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

With this broad definition in the Act, it was agreed that we cannot limit business entity treatment to those enterprises which obtain business licenses or business names. Instead we agreed to use a tax law model. If a filer is taking business deductions for an enterprise, we will consider it a business entity to be reported on Schedule A. Clients of the entity should be disclosed on Schedule H. If the filer is not taking business deductions, the enterprise should not be disclosed on Schedule A, and clients should be disclosed on Schedule D as direct sources of income to the official.

Bob Leidigh (assisted by Judy Davis and Alice Hughes) will work to develop a regulation to implement and make more specific this tax law model. We will also, to the extent possible, try to provide some guidance in the regulation on the question of assigning value to these unincorporated business entities. We hope to see a draft at an advice request meeting by May of this year.1/

2. Lines of credit:2/ For purposes of SEI reporting, lines of credit are not reportable unless and until they are utilized. A line of credit is "utilized" if it is drawn upon or its existence is a factor in securing other credit. Once a line of credit is utilized, it is reportable as a loan in the same manner as any other loan. (Flick Advice Letter, No. A-84-248. See also Advice Memo No. M-82-011.) This rule applies to lines of credit from commercial lending institutions and from other sources.3/

For purposes of campaign reporting, new Regulation 18216 (enforceable promises) governs cases involving lines of credit established by sources other than commercial lending institutions (i.e. by contributors). The full amount of credit must be reported on the enforceable promise ("pledge") schedule at the time it is established. Draws on the line of credit must be reported just like other payments received in satisfaction of an enforceable promise (or pledge).

In cases where the candidates establish lines of credit for themselves at commercial lending institutions, the lines of credit, like other personal loans, are not reported for campaign purposes until drawn upon or otherwise utilized for contribution to the campaign. The draws must be reported like any other contribution made from the candidate to his or her own campaign.

The commercial line of credit situation discussed in the preceding paragraph should be distinguished from the case where a candidate actually obtains funds, rather than

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1/ Subsequent to the meeting, Jeanne Pritchard asked that this regulation also provide some further definition of the term "business trust," which appears in Section 82005.

2 This memo supersedes Advice Memos Nos. M-87-224 and M-87-225.

3/ The rule described in this paragraph governs reporting only. For disqualification purposes, a line of credit is a promise of income in its full amount at the time it is established.

just a line of credit. If a candidate obtains funds and puts those funds into an account segregated from other account(s) normally used for his or her personal expenses, the funds should be considered reportable contributions from the candidate to the campaign if the candidate intends to use the funds to finance the campaign. Obviously, advice givers cannot do more than recite this test to advice requesters and let them determine what their intent is. It will fall to the Commission to determine if there exists sufficient objective evidence to disprove a stated intent to the contrary in a particular case.

3. Meals provided by lobbyists to legislators' friends: This issue was continued without discussion for consideration at a later advice request meeting.

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